

CSX Insurance Company Employer Status Determination

This is the decision of the Railroad Retirement Board regarding status of CSX Insurance Company (CSXIC) as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) (RRA) and the Railroad Unemployment Insurance Act (45 U.S.C. §351 et seq.) (RUIA).

CSXIC is a wholly-owned subsidiary of CSX Corporation. Information regarding CSXIC was provided by Mr. Richard H. Hamilton, President & General Manager of CSXIC, and Mr. John W. Tissue, Tax Counsel, CSX Corporation. CSXIC was incorporated November 25, 1987, and began operations December 4, 1987. It has three employees and first paid salaries or wages March 1, 1993. CSXIC markets insurance. Mr. Tissue describes the types of insurance sold by CSXIC as including the following:

- For employee exposures,
 - Workers' compensation
 - United States Longshore & Harbor Workers' Compensation
 - Federal Employers' Liability Act;
- For Vehicle exposures,
 - Fleet liability
 - Fleet physical damage
 - Truckers' liability
 - Personal auto liability and physical damage;
- General liability insurance;
- Property insurance;
- Excess liability insurance;
- Fidelity insurance;
- Protection and indemnity insurance;
- Charterer's liability;
- Terminal operators legal liability;
- Hull Insurance;
- Cargo Insurance;

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- Reinsurance,
 - Excess liability
 - Excess property
 - Personal auto
 - Personal homeowners
 - Railroad protective liability.

CSXIC does 35 percent of its business with CSX Transportation, a subsidiary of CSX Corporation and a covered employer.

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231(1)(a)(1)), insofar as relevant here, defines a covered employer as:

(i) any carrier by railroad, subject to the jurisdiction of the Surface Transportation Board under Part A of subtitle IV of title 49, United States Code;

(ii) any company which is directly or indirectly owned or controlled by, or under common control with one or more employers as defined in paragraph (i) of this subdivision and which operates any equipment or facility or performs any service (other than trucking service, casual service, and the casual operation of equipment and facilities) in connection with the transportation of passengers or property by railroad *

* * .

Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (45 U.S.C. §§ 351(a) and (b)) contain substantially similar definitions, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

CSXIC is clearly not a carrier by rail. However, it is under common control with an employer by reason of CSXIC and CSX Transportation both being subsidiaries of CSX Corporation. The issue to be determined is whether CSXIC's provision of insurance to its rail affiliate constitutes the performance of a service in connection with rail transportation. Section 202.7 of the regulations provides that service is in connection with railroad transportation:

* * * if such service or operation is reasonably directly related, functionally or economically, to the

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performance of obligations which a company or person or
companies or persons have undertaken as a common
carrier

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by railroad, or to the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad. [20 CFR 202.7].

This is a case of first impression before the Board. This agency has never addressed the question of whether the provision of insurance is a service in connection with rail transportation. However, in addition to section 202.7 of the Board's regulations, quoted above, the Board is guided by various court decisions that have addressed the meaning of service in connection with railroad transportation.

In Standard Office Building v. United States of America, 819 F. 2d 1371 (7th Cir. 1987), the Court stated that the companion language in the Railroad Retirement Tax Act regarding performance of service in connection with transportation of passengers or property by railroad was intended to cover "substantially all those organizations which are intimately related to the transportation of passengers or property by railroad" but would "exclude services unrelated to rail transportation, such as operating an amusement park open to the public on land owned by the railroad * * *."

In a recent decision, Canadian Pacific Finance, Inc., BCD No. 96-11, the Board found that a company providing financial services to its railroad affiliates was a covered employer. Those services included tax, cash management, internal audit, and financing services. In so holding, the Board found these services to be analogous to services held covered under the Acts in Adams v. Railroad Retirement Board, 214 F. 2d 534 (9th Cir. 1954) ("accounting services, the services of a purchasing department, * * * correspondence and stenographic services * * * bridge and building services, a safety engineer and repairs for its automotive equipment and its general rolling stock").

While the provision of insurance might broadly be viewed as related "economically" to the transportation of persons or property by rail, it is not the type of service that could be said to be intimately related to rail transportation and that a railroad would normally provide on its own. A review of the various precedential decisions leads a majority of the Board to

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conclude that section 1(a)(1)(ii) of the Railroad Retirement Act was not intended to bring within the coverage of that Act a service, such as the sale of insurance, that is neither intimately related to rail transportation nor a service that a carrier would normally perform.

A majority of the Board finds that CSXIC is not an employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act.

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Glen L. Bower

(Dissenting)

V. M. Speakman, Jr.

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Jerome F. Kever

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In Railroad Retirement Board v. Duquesne Warehouse Co., 149 F.2d 507 (D.C.Cir. 1945), aff'd 326 U.S. 446, 90 L.Ed. 192, 66 S.Ct. 238 (1946), the Court of Appeals held that a warehouse corporation owned by a railroad and engaged in loading and unloading railroad cars and other handling of property transported by railroad, and in other activities which enabled the railroad to perform its rail transportation more successfully, was performing "services in connection with" the transportation of property by railroad and therefore an employer under the Railroad Unemployment Insurance Act. The Court of Appeals quoted from the opinion of the Railroad Retirement Board which had held that Duquesne was an employer under the Act:

In light of the general purpose of the * * * [Railroad Unemployment Insurance Act] and accepted doctrines of statutory construction, the Board has construed the carrier affiliate coverage provision as denoting services which are an integral part of, or are closely related to, the rail transportation system of a carrier and as including within its coverage (1) carrier affiliates engaged in activities which are themselves railroad transportation or which are rendered in connection with goods in the process of transportation, such as loading and unloading railroad cars, receipt, delivery, transfer in transit, and other handling of property transported by railroad; and also (2) carrier affiliates engaged in activities which enable a railroad to perform its rail transportation, such as maintenance and repair of way and equipment, and activities which enable a railroad to operate its rail system more successfully and to improve its services to the public such as auxiliary bus transportation, dining facilities, and incidental warehousing services.

We agree with the Board's construction of the Act. It follows the ordinary meaning of the words used in the statute. It achieves a common sense result well within what we conceive to be the policy of Congress, i.e., to cover the business of railroading as it is actually carried on. (Footnote omitted.) 149 F.2d at 509.

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A fundamental rule of statutory construction is that unless otherwise defined, words in a statute will be interpreted as taking their ordinary, contemporary, common meaning. Perrin v. United States, 444 US. 37, 42, 62 L.Ed. 2d 199, 204, 100 S.Ct. 311 (1979). The word "connection" ordinarily means a relationship or association. CSXIC sells insurance to an affiliated railroad. Since insurance is essential to the operation of that enterprise, the transportation of property or passengers by rail, the provision of insurance constitutes service in connection with railroad transportation within the statutory definition of "employer", applying the ordinary meaning of the words used in the statute.

CSXIC is under common control a rail carrier employer; it devotes 35 percent of its business to its rail affiliate. See, e.g., Adams v. Railroad Retirement Board, 214 F. 2d 534 (9th Cir. 1954), (Accounting services, the services of a purchasing department, the service of caring for and replacing poles in an overhead trolley system, stenographic service, bridge and building service, and repair service conducted by a railroad subsidiary which was in the electric utility business constituted service in connection with railroad transportation); Southern Development Company v. Railroad Retirement Board, 243 F. 2d 351 (8th Cir. 1957) (Corporation which owned a building and leased most of the space therein to a railroad for the railroad's general offices and ticket offices was held to be providing service in connection with railroad transportation); and Railroad Concrete Crosstie Corporation v. Railroad Retirement Board, 709 F. 2d 1404 (11th Cir. 1983) (Wholly owned subsidiary of a railroad which provided the vast majority of concrete crossties which it manufactured to that railroad was held to be providing service in connection with railroad transportation.) See also, Atlantic Land & Improvement Company v. United States, 790 F. 2d 853 (11th Cir. 1986), concerning a determination of employer status under the Railroad Retirement Tax Act where a subsidiary of a railroad operated a phosphate loading facility.

The purchase of insurance is not unique to the rail industry (although it should be noted that CSXIC is providing insurance for liability under the Federal Employers Liability Act, a liability which exists only for railroads). It is, however, essential to railroad transportation. Where, as is the case with CSXIC, such service is performed by a company which is under common control with a rail carrier employer and where such

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service is not casual, it constitutes service in connection with railroad transportation within the meaning of section 1(a)(1)(ii) of the Railroad Retirement Act (45 U.S.C. §231(a)(1)(ii)) and section 1(a) of the Railroad Unemployment Insurance Act (45 U.S.C. §351(a)). Accordingly, CSXIC is thus a covered employer under those Acts effective December 4, 1987, the date as of which it commenced operations.

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